

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 93-0123

Appointment of a District Judge to Preside  
in a State Bar Disciplinary Action

The Supreme Court of Texas hereby appoints the Honorable Joseph H. Hart, Judge of the 126th District Court, to preside in the Disciplinary Action styled:

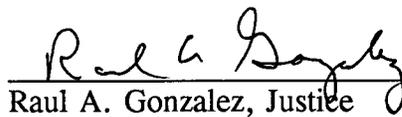
The Commission on Lawyer Discipline v. Mark William Nelson

to be filed in a District Court of Dallas County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Dallas County, Texas, a copy of this Order and of the Disciplinary Petition for filing and service pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

In Chambers, this 28<sup>th</sup> day of June, 1993.

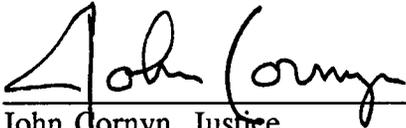
  
Thomas R. Phillips, Chief Justice

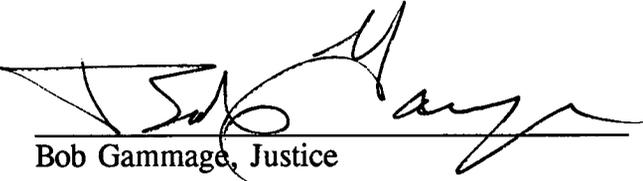
  
Raul A. Gonzalez, Justice

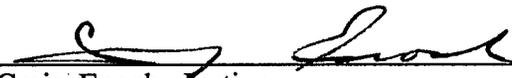
  
Jack Hightower, Justice

  
Nathan L. Hecht, Justice

  
Lloyd Doggett, Justice

  
John Cornyn, Justice

  
Bob Gammage, Justice

  
Craig Enoch, Justice

  
Rose Specter, Justice

NO. \_\_\_\_\_

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	DALLAS COUNTY, TEXAS
MARK WILLIAM NELSON	§	_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas (hereinafter called "Petitioner"), complaining of Respondent, Mark William Nelson (hereinafter called "Respondent"), showing the Court:

I.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex. Gov't. Code Ann. §81.001, et seq. (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaint which forms the basis of the Disciplinary Petition was filed after May 1, 1992.

II.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent is a resident of and has his principal place of business in Dallas County, Texas. An officer may serve citation on Respondent at his business address located at at 314 West 7th Street, Dallas, Dallas County, Texas 75208.

### III.

In or around August or September 1990, Robert Allen King (hereinafter called "King") hired Respondent to represent him on a medical malpractice claim against one of King's physicians. Although the parties did not sign a contract for services, Respondent billed King for attorney's fees on an hourly basis and for expenses as they were incurred, and King paid at least a portion of the charges.

### IV.

Respondent filed a medical malpractice lawsuit on King's behalf on or about February 19, 1991. King subsequently died on or about June 2, 1991, of causes unrelated to the subject matter of the pending lawsuit. After King's death, Respondent asserted to King's parents that he had been retained by King to represent King in the malpractice matter, producing as evidence of his representation to King's parents a contingent fee contract purportedly executed by King on or about January 17, 1991, and providing for attorney's fees in the amount of forty (40%) per cent of any recovery obtained against the physician. In truth and in fact such document had not been executed by King as written. Respondent or someone acting at his direction or under his control had utilized a previous attorney-client contract which had been executed by King and altered the date of such contract in order to make it appear to have application to the medical malpractice lawsuit. Thereafter, Respondent continued to prosecute the medical malpractice case, and continued billing King's estate for attorney's fees and expenses notwithstanding his

assertion that he had a contingent fee arrangement with King, which bills were paid by King's parents. The malpractice lawsuit was dismissed on or about May 22, 1992, on the granting of a defensive motion for summary judgment which asserted that Respondent had filed the lawsuit after expiration of the statute of limitations.

V.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III. and IV. hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.01(b)(1), 1.01(b)(2), 1.04(a), 4.01(a), and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

VII.

The complaint which forms the basis of the cause of action hereinabove set forth was brought to the attention of the office of the General Counsel of the State Bar of Texas by Dolores J. King's filing of a complaint on or about September 16, 1992.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant; and that Petitioner have such other relief to which entitled, including costs of Court and attorney's fees.

Respectfully submitted,

James M. McCormack  
General Counsel

Dawn Miller  
Senior Assistant General Counsel

Office of the General Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711  
(512) 463-1381



Dawn Miller  
State Bar of Texas No. 15561900

ATTORNEYS FOR PETITIONER

GENERAL\NELSONM.DP



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

POST OFFICE BOX 12248      AUSTIN, TEXAS 78711  
TEL: (512) 463-1312  
FAX: (512) 463-1365

CLERK  
JOHN T. ADAMS

JUSTICES  
RAUL A. GONZALEZ  
JACK HIGHTOWER  
NATHAN L. HECHT  
LLOYD DOGGETT  
JOHN CORNYN  
BOB GAMMAGE  
CRAIG ENOCH  
ROSE SPECTOR

EXECUTIVE ASS'T.  
WILLIAM L. WILLIS  
ADMINISTRATIVE ASS'T.  
MARY ANN DEFIBAUGH

July 7, 1993

The Honorable Joseph H. Hart  
126th District Court  
Post Office Box 1748  
Austin, Texas 78767

RE: COMMISSION FOR LAWYER DISCIPLINE v. MARK WILLIAM NELSON.

Dear Judge Hart,

We enclose for your information, a copy of the order of assignment, a copy of the Disciplinary Action, a copy of the notification letters to the State Bar General Counsel and respondent's attorney, as well as to the district clerk, in the referenced case.

Sincerely,

SIGNED

John T. Adams  
Clerk

Encl.



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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MARY ANN DEFIBAUGH

July 7, 1993

Mr. James M. McCormack  
General Counsel, State Bar of Texas  
Post Office Box 12487  
Austin, Texas 78711

Mr. Mark William Nelson  
314 West 7th Street  
Austin, Texas 78711

RE: COMMISSION FOR LAWYER DISCIPLINE v. MARK WILLIAM NELSON.

Dear Mr. McCormack and Mr. Nelson,

Pursuant to Rule 3.02 of the Texas Rules of Disciplinary Procedure, I hereby notify you that the Supreme Court of Texas has appointed the Honorable Joseph H. Hart, 126th District Court, Post Office Box 1748, Austin, Texas 78767, to preside in the above referenced action.

Copies of pertinent documents are enclosed for your use.

Sincerely,

SIGNED

John T. Adams  
Clerk

Encl.

cc: Hon. Joseph H. Hart



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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ADMINISTRATIVE ASS'T.  
MARY ANN DEFIBAUGH

July 7, 1993

Hon. Bill Long  
District Clerk  
Dallas County Courthouse  
600 Commerce  
Dallas, Texas 75212

RE: COMMISSION FOR LAWYER DISCIPLINE v. MARK WILLIAM NELSON.

Dear Mr. Long,

Pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure, I am sending for filing, the State Bar of Texas Disciplinary Action referenced above and a copy of the Supreme Court's order appointing a judge to preside in this action.

Sincerely,

SIGNED

John T. Adams  
Clerk

Encl.

cc: Hon. Joseph H. Hart  
Mr. Mark William Nelson  
Mr. James M. McCormack